

Assembly Bill No. 1719

Passed the Assembly September 11, 2003

Chief Clerk of the Assembly

Passed the Senate September 9, 2003

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 515.6, 3099.2, 3099.3, 3099.4, 6309, and 6315 of, and to add Section 3201.81 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1719, Committee on Labor and Employment.
Employment.

Existing law exempts specified doctors from overtime pay.

This bill would make a technical change as to which doctors are exempted.

Existing law requires individuals who perform work as electricians to become certified by January 1, 2005, and prohibits uncertified individuals from performing electrical work for which certification is required after that date. After the January 1, 2005, certification deadline, an uncertified person may perform electrical work for which certification is required to obtain on-the-job experience as a registered apprentice, if the uncertified person meets certain requirements.

This bill would permit the California Apprenticeship Council to extend for up to two years the January 1, 2005, certification deadline and requires the council to extend the deadline if the council concludes that the January 1, 2005, deadline does not provide individuals sufficient time to become certified, enroll in apprenticeship programs, or register as an uncertified person performing electrical work.

Existing law requires the Division of Apprenticeship Standards to provide for the administration of electrician certification tests in non-English languages spoken by a substantial number of applicants, except insofar as the ability to understand specified information in English is necessary for safety reasons. Existing law further requires the division to complete a report to the Legislature on the status of electrician certification by January 1, 2004.

This bill would amend existing law to require the division to administer certification tests in Spanish and, to the extent practicable, other non-English languages spoken by a substantial number of applicants. This bill would further extend the deadline



by which the division must report to the Legislature on the status of electrician certification to an unspecified date prior to the deadline for electricians to become certified.

Under existing law, certain industries may enter into collective bargaining agreements that establish an alternative dispute resolution system to supplement or replace all or part of the dispute resolution processes set forth in Division 4 of the Labor Code, relating to workers' compensation.

This bill would, contingent upon the enactment and operation of SB 228, designate the organization certified by the California Horse Racing Board to represent the majority of licensed jockeys to negotiate a similar agreement for licensed jockeys.

Under existing law, the Division of Occupational Safety and Health investigates complaints that a workplace is not safe, and it may issue orders necessary to ensure employee safety. It notifies a complainant of any action taken.

This bill would require the division to notify the complainant within 14 calendar days of taking action. It would also require the division to annually compile and release on its Web site information as to complaints received and actions taken.

Under existing law, the Bureau of Investigation within the division is responsible for directing accident violations where there is a serious injury to 5 or more employees, death, or a request for prosecution by the division. It also refers appropriate cases to prosecuting authorities.

This bill would require the division to provide helpful information to the bureau. It would also require the bureau to notify the prosecuting authorities within 14 calendar days of a determination that there is legally insufficient evidence of a violation of law if the prosecuting authorities request notice.

The people of the State of California do enact as follows:

SECTION 1. Section 515.6 of the Labor Code is amended to read:

515.6. (a) Section 510 shall not apply to any employee who is a licensed physician or surgeon, who is primarily engaged in duties that require licensure pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and whose hourly rate of pay is equal to or greater than



fifty-five dollars (\$55.00). The Division of Labor Statistics and Research shall adjust this threshold rate of pay each October 1, to be effective the following January 1, by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) shall not apply to an employee employed in a medical internship or resident program or to a physician employee covered by a valid collective bargaining agreement pursuant to Section 514.

SEC. 2. Section 3099.2 of the Labor Code is amended to read:

3099.2. (a) (1) Persons who perform work as electricians shall become certified pursuant to Section 3099 by January 1, 2005. After January 1, 2005, uncertified persons may not perform electrical work for which certification is required.

(2) The California Apprenticeship Council may extend for up to two years the January 1, 2005, deadline for persons who perform work as electricians to become certified. The council shall extend the deadline if the council concludes that the existing deadline will not provide individuals sufficient time to obtain certification, enroll in apprenticeship programs, or register pursuant to Section 3099.4. The council may set different deadlines for different certification categories.

(3) For purposes of any continuing education or recertification requirement, individuals who become certified prior to the deadline for certification shall be treated as having become certified on the first anniversary of their certification date that falls after the certification deadline.

(b) Certification is required only for those persons who perform work as electricians for contractors licensed as Class C-10 electrical contractors under the Contractors' State License Board Rules and Regulations. Certification is not required for persons performing work for contractors licensed as Class C-7 low voltage systems or Class C-45 electric sign contractors as long as the work performed is within the scope of the Class C-7 or Class-45 license, including incidental and supplemental work as defined in Section 7059 of the Business and Professions Code, and regardless of whether the same contractor is also licensed as a Class C-10 contractor.



(c) The division may establish different certification categories corresponding to the types of electrical work performed by contractors.

(d) Notwithstanding subdivision (a), certification is not required for registered apprentices performing electrical work as part of an apprenticeship program approved under this chapter, a federal Bureau of Apprenticeship Training program, or a state apprenticeship program authorized by the federal Bureau of Apprenticeship Training. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.

(e) Notwithstanding subdivision (a), certification is not required for any person employed pursuant to Section 3099.4.

(f) Notwithstanding subdivision (a), certification is not required for a nonresidential lighting trainee (1) who is enrolled in an on-the-job instructional training program approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3090, and (2) who is under the onsite supervision of a nonresidential lighting technician certified pursuant to Section 3099.

(g) Notwithstanding subdivision (a), the qualifying person for a Class C-10 electrical contractor license issued by the Contractors State License Board need not also be certified pursuant to Section 3099 to perform electrical work for that licensed contractor or to supervise an uncertified person employed by that licensed contractor pursuant to Section 3099.4.

(h) For the purposes of this section, “electricians” has the same meaning as the definition set forth in Section 3099.

SEC. 3. Section 3099.3 of the Labor Code is amended to read:

3099.3. The Division of Apprenticeship Standards shall do all of the following:

(a) Make information about electrician certification available in non-English languages spoken by a substantial number of construction workers, as defined in Section 7296.2 of the Government Code.

(b) Provide for the administration of certification tests in Spanish and, to the extent practicable, other non-English languages spoken by a substantial number of applicants, as defined



in Section 7296.2 of the Government Code, except insofar as the ability to understand warning signs, instructions, and certain other information in English is necessary for safety reasons.

(c) Ensure, in conjunction with the California Apprenticeship Council, that by no later than January 1, 2003, all electrician apprenticeship programs approved under this chapter that impose minimum formal education requirements as a condition of entry provide for reasonable alternative means of satisfying those requirements.

(d) Ensure, in conjunction with the California Apprenticeship Council, that by no later than January 1, 2003, all electrician apprenticeship programs approved under this chapter have adopted reasonable procedures for granting credit toward a term of apprenticeship for other vocational training and on-the-job training experience.

(e) Report to the Legislature prior to the deadline for individuals to become certified, on the status of electrician certification, including all of the following:

(1) The number of persons who have been certified pursuant to Section 3099.

(2) The number of persons enrolled in electrician apprenticeship programs.

(3) The number of persons who have registered pursuant to Section 3099.4.

(4) The estimated number of individuals performing work for Class C-10 electrical contractors for which certification will be required after the deadline for certification, who have not yet been certified and are not enrolled in apprenticeship programs or registered pursuant to Section 3099.4.

(5) Whether enforcement of the deadline for certification will cause a shortage of electricians in California.

(6) Whether persons who wish to become certified electricians will have an adequate opportunity to pass the certification exam, to register pursuant to Section 399.4, or to enroll in an apprenticeship program prior to the deadline for certification.

SEC. 4. Section 3099.4 of the Labor Code is amended to read:

3099.4. (a) After the deadline for certification, an uncertified person may perform electrical work for which certification is required under Section 3099 in order to acquire the necessary



on-the-job experience for certification, if all of the following requirements are met:

(1) The person is registered with the Division of Apprenticeship Standards. A list of current registrants shall be maintained by the division and made available to the public upon request.

(2) The person either has completed or is enrolled in an approved curriculum of classroom instruction.

(3) The employer attests that the person shall be under the direct supervision of an electrician certified pursuant to Section 3099 who is responsible for supervising no more than one uncertified person. An employer who is found by the division to have failed to provide adequate supervision may be barred by the division from employing uncertified individuals pursuant to this section in the future.

(b) For purposes of this section, an “approved curriculum of classroom instruction” means a curriculum of classroom instruction approved by the electrician certification curriculum committee established pursuant to paragraph (2) of subdivision (a) of Section 3099 and provided under the jurisdiction of the State Department of Education or the Board of Governors of the California Community Colleges.

(c) For purposes of this section, a person is “enrolled” in an approved curriculum of classroom instruction if the person is attending classes on a full-time or part-time basis toward the completion of such a curriculum.

(d) Registration under this section shall be renewed annually and the registrant shall provide to the division certification of the class work completed and on-the-job experience acquired since the prior registration.

(e) The division shall establish registration fees necessary to implement this section, not to exceed twenty-five dollars (\$25) for the initial registration. There shall be no fee for annual renewal of registration. Fees collected are continuously appropriated in an amount sufficient to administer this section and that amount may be expended by the division for this purpose.

(f) The division shall issue regulations to implement this section.



(g) For purposes of Section 1773, persons employed pursuant to this section do not constitute a separate craft, classification, or type of worker.

(h) Notwithstanding any other provision of law, an uncertified person who has completed an approved curriculum of classroom instruction and is currently registered with the division may take the certification examination. The person shall be certified upon passing the examination and satisfactorily completing the requisite number of on-the-job hours required for certification. A person who passes the examination prior to completing the requisite hours of on-the-job experience shall continue to comply with subdivision (d) of this section.

SEC. 5. Section 3201.81 is added to the Labor Code, to read:

3201.81. In the horse racing industry, the organization certified by the California Horse Racing Board to represent the majority of licensed jockeys pursuant to subdivision (b) of Section 19612.9 of the Business and Professions Code is the labor organization authorized to negotiate the collective bargaining agreement establishing an alternative dispute resolution system for licensed jockeys pursuant to Section 3201.8.

SEC. 6. Section 6309 of the Labor Code is amended to read:

6309. If the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the same with or without notice or hearings. However, if the division receives a complaint from an employee, an employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or government agency representative, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this



section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, or a local law enforcement agency, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints are deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to a complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

The division shall keep complete and accurate records of all complaints, whether verbal or written, and shall inform the complainant, whenever his or her identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action, within 14 calendar days of taking any action. The records of the division shall include the dates on which any action was taken on the complaint, or the reasons for not taking any action on the complaint. The division shall, pursuant to authorized regulations, conduct an informal review of any refusal by a representative of the division to issue a citation with respect to an alleged violation. The division shall furnish the employee or the representative of employees requesting the review a written statement of the reasons for the division's final disposition of the case.

The name of a person who submits to the division a complaint regarding the unsafe condition of an employment or place of employment shall be kept confidential by the division, unless that person requests otherwise.

The division shall annually compile and release on its Web site data pertaining to complaints received and citations issued.

The requirements of this section do not relieve the division of its requirement to inspect and assure that all places of employment are safe and healthful for employees. The division shall maintain the capability to receive and act upon complaints at all times.



SEC. 7. Section 6315 of the Labor Code is amended to read:

6315. (a) There is within the division a Bureau of Investigations. The bureau is responsible for directing accident investigations involving violations of standards, orders, special orders, or Section 25910 of the Health and Safety Code, in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative. The bureau shall review inspection reports involving a serious violation where there have been serious injuries to one to four employees or a serious exposure, and may investigate those cases in which the bureau finds criminal violations may have occurred. The bureau is responsible for preparing cases for the purpose of prosecution, including evidence and findings.

(b) The division shall provide the bureau with all of the following:

(1) All initial accident reports.

(2) The division's inspection report for any inspection involving a serious violation where there is a fatality, and the reports necessary for the bureau's review required pursuant to subdivision (a).

(3) Any other documents in the possession of the division requested by the bureau for its review or investigation of any case or which the division determines will be helpful to the bureau in its investigation of the case.

(c) The supervisor of the bureau is the administrative chief of the bureau, and shall be an attorney.

(d) The bureau shall be staffed by as many attorneys and investigators as are necessary to carry out the purposes of this chapter. To the extent possible, the attorneys and investigators shall be experienced in criminal law.

(e) The supervisor of the bureau and bureau representatives designated by the supervisor have a right of access to all places of employment necessary to the investigation, may collect any evidence or samples they deem necessary to an investigation, and have all of the powers enumerated in Section 6314.

(f) The supervisor of the bureau and bureau representatives designated by the supervisor may serve all processes and notices throughout the state.

(g) In any case where the bureau is required to conduct an investigation, and in which there is a serious injury or death, the



results of the investigation shall be referred in a timely manner by the bureau to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the bureau determines that there is legally insufficient evidence of a violation of the law. If the bureau determines that there is legally insufficient evidence of a violation of the law, the bureau shall notify the appropriate prosecuting authority, if the prosecuting authority requests notice.

(h) The bureau may communicate with the appropriate prosecuting authority at any time the bureau deems appropriate.

(i) Upon the request of a county district attorney, the department may develop a protocol for the referral of cases that may involve criminal conduct to the appropriate prosecuting authority in lieu of or in cooperation with an investigation by the bureau. The protocol shall provide for the voluntary acceptance of referrals after a review of the case by the prosecuting authority. In cases accepted for investigation by the prosecuting authority, the protocol shall provide for cooperation between the prosecuting authority, the division, and the bureau. Where a referral is declined by the prosecuting authority, the bureau shall comply with subdivisions (a) to (h), inclusive.

SEC. 8. Section 5 of this act shall only become operative if Senate Bill 228 is enacted and becomes operative.



Approved _____, 2003

Governor

